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SENATE BILL 3387

By Jordan

AN ACT to authorize any municipality having a population of not less than four thousand two hundred five (4,205) nor more than four thousand two hundred fifteen (4,215), according to the 1990 federal census or any subsequent federal census, to levy and collect a privilege tax on new development in the city in order to provide that new development contribute its fair share of the cost of providing public facilities and services made necessary by such new development.

WHEREAS, after an intense national competition, the state of Tennessee successfully negotiated with the General Motors Corporation to locate its Saturn plant in Tennessee; and

WHEREAS, the investment in said plant is anticipated to be approximately \$3.5 billion when the plant is complete; and

WHEREAS, the Saturn plant is anticipated to stimulate commercial, office, industrial and warehouse development in the vicinity of the Saturn plant; and

WHEREAS, the projected non-residential development and the availability of jobs is anticipated to stimulate a significant demand for new dwelling units; and

WHEREAS, orderly growth patterns within municipalities are essential to the welfare of the state and its citizens; and

WHEREAS, tremendous growth in construction of houses, condominiums, apartments, and businesses is occurring in many areas of the state and the construction of new residences and businesses and the expansion of existing businesses has created and imposes severe

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financial pressure on municipalities to provide urban type services, such as water, sewage, drainage, parks and roads; and

WHEREAS, municipalities many times lack a financial base capable of generating the funds required to provide services and capital improvements to new residences and businesses that such new growth demands; and

WHEREAS, in order to protect the public health, safety, and general welfare of the citizens and residents of those municipalities it is necessary that an additional method of financing public improvements for urban type services be granted to those municipalities and that those municipalities be authorized to levy impact fees upon new developments, with the fees collected earmarked for the funding of such services necessitated by the new development; and

WHEREAS, the most logical and effective mechanism to accomplish the intended result would be the imposition of a new privilege tax on new development in Fairview; now, therefore, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This Act shall be known and cited as the Municipal Adequate Facilities Tax.

SECTION 2. As used in this Act, unless a different meaning appears from the context:

(a) "Building" means any structure built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home. This will not pertain to buildings used for agricultural purposes.

(b) "Building Permit" means a permit for development issued in the municipality.

(c) "Capital Improvement Program" means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expense, for the purchase, construction, or replacement of the physical assets of the community are included.

(d) "Certificate of Occupancy" means a license for occupancy of a building or structure issued in the municipality.

(e) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or the addition to any building or structure, or any part thereof, which provides, adds to or increases the floor area of a residential or non-residential use.

(f) "Dwelling Unit" means a room or rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly or longer basis; physically separated from any other room(s) or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.

(g) "Floor Area" means the total of the gross horizontal area of all floors, including usable basements and cellars, below the roof and within the outer surface of the main walls of principal or accessory buildings or the center lines of party walls separating such building or portions thereof, or within lines drawn parallel to and two (2) feet within the roof line of any building or portions thereof without walls, but excluding in the case of non-residential facilities: arcades, porticoes and similar open areas which are accessible to the general public, and which are not designed or used as sales, display, storage, services or production areas.

(h) "General Plan" means the official statement of the planning commission which sets forth major policies concerning future development of the jurisdictional area and meeting the provisions set forth in Tennessee Code Annotated, Sections 13-3-101, 13-3-102 and 13-4-302. For the purposes of this act only, a general plan may consist solely of the land development plan element which sets out a plan or scheme of future land usage.

(i) "Governing Body" means the municipal legislative body of any municipality having a population of not less than four thousand two hundred five (4,205) nor more than four thousand two hundred fifteen (4,215), according to the 1990 federal census or any subsequent federal census.

(j) "Major Street or Road Plan" means the plan adopted by the planning commission, pursuant to Tennessee Code Annotated, Section 13-3-402 and 13-4-302, showing among other things, "the general location, character, and extent of public ways [and] the removal, relocation, extension, widening, narrowing, vacating, abandonment or change of use of existing public ways...".

(k) "Non-Residential" means the development of any property for any use other than residential use, except as may be exempted by this act.

(l) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate or other group or combination acting as a unit, and the plural as well as the singular number.

(m) "Place of Worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related functions or which are or are intended to be leased, rented or used by persons who do not have tax-exempt status.

(n) "Public Buildings" means a building owned by the state of Tennessee or any agency thereof, a political subdivision of the state of Tennessee, including, but not necessarily limited to, counties, cities, school districts and special districts, or the federal government or any agency thereof.

(o) "Public Facility or Facilities" means a physical improvement undertaken by the county or city, including, but not limited to, the following: roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities and other governmental capital improvements benefiting the citizens of the municipality.

(p) "Residential" means the development of any property for a dwelling unit or units.

(q) "Municipality" means any municipality having a population of not less than four thousand two hundred five (4,205) nor more than four thousand two hundred fifteen (4,215), according to the 1990 federal census or any subsequent federal census.

SECTION 3. It is the intent and purpose of this act to authorize a municipality to which this act applies to impose a tax on new development in the municipality payable at the time of issuance of a building permit or certificate of occupancy so as to ensure and require that the persons responsible for new development share in the burdens of growth by paying their fair share for the cost of new and expanded facilities made necessary by such development.

SECTION 4. Engaging in the act of development within the municipality, except as provided in Section 6 herein, is declared to be a privilege upon which the municipality may, by ordinance of the governing body, levy a tax in an amount not to exceed the rate set forth in Section 7.

SECTION 5. The governing body shall impose the tax authorized herein by ordinance after adopting a capital improvements program indicating the need for the cost of public facilities anticipated to be funded, in part, by this tax and after finding that the need for such public facilities is reasonably related to new development in the municipality. The ordinance of the governing body imposing this tax shall state the rate of the tax on new residential and non-residential development. The governing body shall, by ordinance, adopt administrative guidelines, procedures, regulations, and forms necessary to properly implement, administer, and enforce the provisions of this act.

SECTION 6. This Act shall not apply to development of:

- (a) Public Buildings.
- (b) Places of worship.

SECTION 7. For the exercise of the privilege described herein, the municipality may impose a tax on new development not to exceed:

- (a) One dollar (\$1.00) per gross square foot of new residential development.
- (b) Two dollars (\$2.00) per gross square foot of new non-residential development.

The municipality may develop a tax rate schedule by which residential and non-residential uses are classified by type for the purpose of imposition of the tax authorized herein.

SECTION 8. The tax established in this act shall be collected at the time of application for a building permit for development as herein defined or, if a building permit is not required, at the time of application for a certificate of occupancy the city official duly authorized in such jurisdiction to issue building permits or a certificate of occupancy, receive payment in cash or by a negotiable instrument payable to the municipality in the full amount of the tax due. No building permit for development as herein defined, or certificate of occupancy if no building permit is required, shall be issued in the municipality unless the tax has been paid in full to the municipality or a negotiable instrument payable to the municipality has been received.

SECTION 9. All tax funds collected shall be used for the purpose of providing public facilities, the need for which is reasonably related to new development.

SECTION 10. The authority to impose this privilege tax on new development in the municipality is in addition to all other authority to impose taxes, fees, assessments, or other revenue raising or land development regulatory measures granted either by the private or public acts of the state of Tennessee and the imposition of such tax, in addition to any other authorized tax, fee, assessment or charge, shall not be deemed to constitute double taxation.

SECTION 11. The provisions of this Act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law applicable to a municipality. This Act shall be deemed to create an additional and alternative method for a municipality to impose and collect taxes for the purpose of providing public facilities made necessary by new development in the municipality.

SECTION 12. If any provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

SECTION 13. This Act shall have no effect unless it is approved by a two-thirds (2/3) vote of the municipal legislative body of any municipality to which it may apply before October 1, 1998. Its approval or nonapproval shall be proclaimed by the presiding officer of the municipal governing body and certified to the Secretary of State.

SECTION 14. For the purpose of approving or rejecting the provisions of this Act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes it shall become effective upon being approved as provided in Section 13.